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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,008	09/08/2005	Reiner Kober	0690-0122PUS1	1751

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EXAMINER	
HOLT, ANDRIAE M	

ART UNIT	PAPER NUMBER
1616	

NOTIFICATION DATE	DELIVERY MODE
10/08/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No.	Applicant(s)	
	10/525,008	KOBER ET AL.	
	Examiner	Art Unit	
	Andriae M. Holt	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 June 2008*.

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10 and 12-26* is/are pending in the application.

4a) Of the above claim(s) *22-26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10 and 12-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This office action is in response to the amendment filed June 20, 2008. Claims 1-10 and 12-26 are pending in the application. Claims 1 and 12 have been amended. Claims 22-26 were withdrawn in the previous Office Action.

Unity of Invention Issues

The examiner acknowledges Applicant's traversal of the Requirement based on the reasons submitted with the Response filed December 26, 2007. The examiner maintains the Unity of Invention Requirement for the reasons set forth in the Office Action filed March 20, 2008. As a result of that Requirement, claims 22-26 remain withdrawn.

Rejections not reiterated from the previous Office Action are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections and/or objections presently being applied to the instant application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

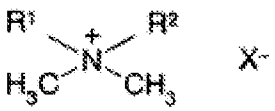
> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-10 and 12-21 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Scholz et al. (CA 2,338,988) in view of Valcke et al. (US 5,714,507)

Applicant's Invention

Applicant claims a composition comprising a1) at least one active ingredient selected from among the triazole class; a2) at least one active ingredient of the formula

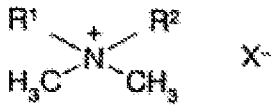


(III) ;

b) at least one straight-chain or branched saturated or unsaturated aliphatic carboxylic acid and d) water. Applicant further claims a composition further comprising component c1) alkylglycosides.

Determination of the scope of the content of the prior art (MPEP 2141.01)

Scholz et al. teach that the objective of the invention is to provide stable homogeneous active compound concentrates on an aqueous base which have a very high proportion of active compound and which contain an activity-enhancing proportion of additives (col. 4, lines 32-37). Scholz et al. teach the objective is achieved by providing aqueous, active-compound-containing compositions in the form of active compound concentrates having an active compound concentration of at least 20%(component a1 less than 35% by weight, instant invention). Scholz et al. teach the concentrates compound comprise a) at least one active compound of formula



I (component a2, mepiquat chloride, instant invention) and b1) alkylglucosides (compound c, surface active adjuvant , alkylglucosides, instant invention). Scholz et al. teach that the formulations are advantageous from an ecological point of view, since the alkylglucosides are additives which are prepared from renewable raw materials (sugars) (page 7, lines 14-17). Scholz et al. teach that the preferred compound of formula I is N,N-dimethylpiperidinium chloride, mepiquat chloride (mepiquat chloride, instant invention (page 12, lines 36-38).

Scholz et al. teach the compositions also contain one or more of the following additives a) up to 30% of anionic, cationic or nonionic surfactants, c) up to 30% in particular up to 20%, of straight-chain or branched C3-C12-akkylcarboxylic acids, C3-C12-di-or tricarboxylic acids, such as propionic acid (component b, propionic acid, less than 70% by weight, less than 50% or less than 40% by weight, instant invention).

Scholz et al. teach that the composition further contains component d) up to 40%, in particular up to 25% of other active compounds from the field of crop protection, including fungicides (page 11, lines 17-20) (a1, active ingredient up to 40%). Scholz et al. further teach the concentration of the active compound is 5-40% in the finished formulation (page 12, lines 32-34). Scholz et al. teach that the compositions contain 20-40% water based on the total weight of the formulation (component d, water, more than 10% of the composition, instant invention).

Ascertainment of the difference between the prior art and the claims (MPEP 2141.02)

Scholz et al. do not teach the active ingredient is among the triazole class, particularly metconazole, or the molar ratio of component (b) to component (a1) is greater than 4. It is for this reason Valcke et al. is joined.

Valcke et al. teach synergistic fungicidal compositions containing a fungicidal triazole and metconazole for treating plants or the loci thereof, or for use in wood-preservation or protection of biodegradable materials (Abstract). Valcke et al. teach water-dilutable homogenous concentrates in particular comprise by weight: 0.25 to 15% , in particular 1 to 10% triazoles (triazole class(a1), weight %, instant invention), 0.5% to 30%, in particular 5 to 15% surfactant (s) (surface active agents, weight %, instant invention) and 0 to 40% carboxylic acid(s) (carboxylic acid (b), weight %, instant invention) (col. 10, lines 14-24). Valcke et al. further teach the said water-dilutable wood-preserving liquids have the advantage that almost instantaneously homogeneous

or quasi homogeneous solutions are formed by mixing these liquids with predominantly aqueous media (col. 10, lines 25-28) (liquid composition and homogeneous, instant invention). Valcke et al. further teach that these solutions have an extremely high physical stability, not only at ambient temperatures, but also at decreased temperatures (col. 10, lines 28-31).

Valcke et al. teach in col. 16, example 7, Composition Examples (Wood Protection), composition A comprising metconazole 3% and propiconazole 1% (triazole class active ingredient, metconazole, instant invention), propionic acid 6% (carboxylic acid, propionic acid, instant invention) and water 19% (water, instant invention). Composition A has the molar ratio of component (b) to component (a1) being greater than 1, wherein component (a1) amounts to more than 1% by weight and component (d) to more than 10% by weight of the total weight of the composition. Valcke et al. teach that apart from both the aforementioned active ingredients of formula (I) and (II), the compositions according to the invention may further contain other active ingredients such as plant growth regulators (col. 11, lines 5-10). Valcke et al. further teach quaternary ammonium compounds such as benzyldimethyltetradecyl ammonium chloride can be used in the composition (col. 11, lines 59-50). Valcke et al. teach that the synergistic mixtures according to the present invention possess advantageous curative, preventive and systemic fungicidal activity to protect plants, in particular culture plants (col. 3, lines 30-33). Valcke et al. teach that the formulations, the compositions, preparations, or mixtures containing the active ingredients are prepared following art-known procedures by homogeneously mixing and/or grinding the active

ingredients with surface-active compounds (surfactants) (col. 5, lines 58-64). Valcke et al. further teach suitable surface-active compounds to be used in the composition are non-ionic, cationic and/or anionic surfactants (col. 6, lines 45-46). Valcke et al. teach more frequently, however, so-called synthetic surfactants are used, especially fatty sulfonates, fatty sulfates(alkyl sulfates, instant invention) or alkylaryl-sulfonates (col. 6, lines 60-63) (alkylsulfonates, instant invention). Valcke et al. further teach that cationic surfactants are preferably quaternary ammonium salts (col. 7, lines 37-38) (quaternized ammonium salts, instant invention).

Finding of prima facie obviousness
Rationale and Motivation (MPEP 2142-2143)

It would have been obvious to one of ordinary skill in the art to combine the teachings of Scholz et al. and Valcke et al. and use metconazole in the composition as taught by Scholz et al. Valcke et al. teach that metconazole may be present in a base or salt form, including the addition of propionic acid. Valcke et al. teach that these forms of metconazole are most suitable for preparing compositions for use as agrochemicals that are useful in combating fungi and prevent the growth in plants. One skilled in the art at the time the invention was made would have been motivated to use metconazole as the active ingredient in the composition because Scholz et al. teach that active compounds including fungicides can be added to the composition.

Given the state of the art as evidenced by the teachings of the cited references, and absent any evidence to the contrary, there would have been a reasonable

expectation of success in combining the teachings of the cited references to produce a stable homogeneous composition that has activity enhancing proportions of additives.

Therefore, the claimed invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made because every element of the invention has been fairly suggested by the cited reference.

None of the claims are allowed.

Conclusion

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andriae M. Holt whose telephone number is 571-272-9328. The examiner can normally be reached on 9:00 am-5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Andriae M. Holt
Patent Examiner
Art Unit 1616

/John Pak/
Primary Examiner, Art Unit 1616